

Patent  
Serial No. 09/750,833  
Agilent Docket No. 10010039-1

## **REMARKS**

### ***Remaining Claims***

Eighteen (18) claims (Claims 1, 2, 4 – 12 and 14 – 20) remain pending in this application through this Amendment. Claims 1, 2, 4, 11, 12, 14 and 20 have been amended by the amendment being filed herewith. As explained in more detail below, the Applicants submit that all claims are in condition for allowance and respectfully request such action.

### ***Double Patenting***

The Terminal Disclaimer submitted on April 14, 2005 was deemed improper because the signing attorney was not of record. A new Terminal Disclaimer is attached, along with an Associate Power of Attorney.

### ***Double Patenting***

The Examiner has provisionally rejected claims 1 – 20 under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 20 of copending application Serial No 10/117,471. The Applicants respectfully traverse the rejection. Nevertheless, a terminal disclaimer is being submitted herewith to overcome the provisional rejection. Accordingly, the Applicants respectfully request that the rejection be withdrawn.

### ***Rejection of Claims 1 – 2, 4 – 10, 11 – 12, and 14 – 20 under 35 USC §112***

Claims 1 – 2, 4 – 10, 11 – 12, and 14 – 20 have been rejected by the Examiner under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Applicants respectfully traverse the rejection and request reconsideration.

The Examiner states that claims 1 and 11 are vague and indefinite because the preamble calls for a computer-implemented method and the first three steps of these claims include the phrase “computer-implemented”, but the

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last two steps of these claims do not include the phrase "computer-implemented". The Applicants respectfully submit that the purpose for using of this phraseology was to indicate that the inventions recited in the claims are computer-related inventions, within the meaning of the PTO guidelines for computer-related inventions. The Applicants believe that the use of this phraseology is proper and is not vague and indefinite, as the Examiner contends. Nevertheless, claims 1 and 11 have been amended to remove the phrase "computer-implemented" and to add other language that clarifies that the alliance members include computers that are programmed to perform functions recited in the claims. Accordingly, the Applicants believe that this rejection is overcome and request that it be withdrawn.

***Rejection of Claims 11, 12, and 14 – 20 under 35 USC §102(b) - VAN HOEK or HAMMER***

Claims 11, 12, and 14 – 20 have been rejected by the Examiner under 35 USC §102(b) as being anticipated Van Hoek or Hammer. The Applicants respectfully traverse the rejection.

The Examiner has rejected independent claim 11 over either Van Hoek or Hammer stating that the elements listed in claim 11, namely, a computer-implemented virtual manufacturer alliance, a computer-implemented virtual distributor alliance, a plurality of computer-implemented virtual flows, and a contracting business "carry no patentable weight because they are not physical features but merely nonfunctional descriptive material (data/information) and thus carry no patentable weight."

The Applicants strongly disagree. The phrase "computer-implemented" further defines physical attributes of the claim elements in that it indicates that functions associated with the claim elements are implemented by computers, i.e., that the invention is a computer-related invention. It is well established that it is proper to include apparatus limitations in method claims. Nonfunctional descriptive material corresponds to words written on a page, mere data, as

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opposed to computer code stored on a computer readable medium, music and literary works, and any other material that does not impart any functionality. The phrase "computer-implemented", as used in the claims, clearly imparts functionality. Nevertheless, claims 1 and 11 have been amended to further clarify that the alliances include computers that are programmed to interact with other components of the virtual business model, which is clearly functional and proper computer-related invention language.

In the rejecting the claims under 35 U.S.C. §102(b), the Examiner merely states that the model recited in claim 11 reads on Van Hoek and Hammer. However, the Examiner gave no patentable weight to the elements of claim 11, as discussed above. In order for a claim to be anticipated under 35 U.S.C. §102(b), each and every element of the claim must be disclosed in a single reference. The Examiner has not made a prima facie case of anticipation because the Examiner gave no patentable weight to the claim elements. As the claims have been amended to clearly and properly recite claim elements corresponding to functional, statutory subject matter, the Applicants respectfully submit that the claims are patentable over both Van Hoek and Hammer under 35 U.S.C. §102(b), and respectfully request that this rejection be withdrawn.

***Rejection of Claims 1, 2, 4 – 10, 11, 12, and 14 – 20 under 35 USC §103(a) - VAN HOEK alone or in view of HAMMER***

Claims 1, 2, 4 – 10, 11, 12, and 14 – 20 are rejected under 35 USC §103(a) as being unpatentable over VAN HOEK alone, or further in view of HAMMER. The Applicants respectfully traverse the rejection.

With reference to the Examiner's rejection of claim 1, the Examiner states that Van Hoek discloses a computer-implemented manufacturing alliance and recites as support for this holding the following language from page 2, lines 38-39 of Van Hoek: "outsourcing, partnering and co-operation among various players."

Independent claims 1 and 11 recite that every member of the virtual manufacturing alliance is "configured to perform a same type of operations associated with manufacturing" the product. One of the important features of the

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invention is that each manufacturing alliance may include multiple members, each of which is capable of performing the same manufacturing task. For example, as shown in Fig. 3 of the present application, manufacturing alliances 14 and 16 each include multiple members. (See also Page 9 of the present application, lines 1 – 3). While a member of manufacturing alliance 14 typically performs a different manufacturing task from that performed by a member of manufacturing alliance 16, members of manufacturing alliance 14 are capable of performing the same manufacturing task. Likewise members of manufacturing alliance 16 are capable of performing the same manufacturing task. This provides the virtual business model of the invention with great flexibility in choosing a manufacturer for a particular manufacturing task.

The above-quoted language from Van Hoek does not teach or suggest this feature of the invention. Rather, Van Hoek seems to be simply referring to separate sources for performing the tasks of manufacturing and distributing, as opposed to a single source that performs these functions. Lines 43 and 44 state “[a]uthors have reflected on the specific potential of ITC for individual functions, such as marketing..., purchasing... and logistics.” Nowhere in Van Hoek is there any mention of a business model having an alliance of manufacturers, all of the members of which are all capable of performing the manufacturing tasks, and having an alliance of distributors, all of the members of which are capable of performing the distribution tasks, as recited in the independent claims of the present application.

The Examiner states that Van Hoek discloses “every virtual distributor alliance (partnering) member being configured to perform operations associated with distribution of the manufactured product”. The Examiner contends that this finding is supported by language in Van Hoek that states: “five interregional distribution centers ... will supply the dealer with the requested car within as order-to-delivery”. The Applicants have thoroughly reviewed the cited prior art and are unable to find the quoted passage anywhere.

Nevertheless, the language quoted by the Examiner does not teach or suggest all members of the distributor alliance “being configured to perform a

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same type of operations associated with distribution of the manufactured product", and all members of the alliance of manufacturers "being configured to perform a same type of operations associated with manufacturing said product", as recited in independent claims 1 and 11. Therefore, even assuming, *arguendo*, that the cited art of record discloses a virtual model having a plurality of distributors, this would not render the independent claims of the application obvious for at least the reasons set forth above with reference to independent claims 1 and 11.

The Examiner states:

Van Hoek fairly teaches the claimed invention except for further specific limitation in step (a) of 1<sup>st</sup> function (manufacturing) alliance comprising a plurality of manufacturer alliance members, every member of the alliance being configured to perform operations associated with the 1<sup>st</sup> function (manufacturing) of the product. However, on page 7, lines 30-32, discloses the integration of by a number of 1<sup>st</sup> tier suppliers of which seven are fully integrated into the final assembly plant', lines 52-54, 'close participation of the suppliers in the final assembly of the car, but the suppliers are also strongly involved in the development, planning and launching of the product.

From this the Examiner concludes:

it would have been obvious to modify a portion of the teaching of Van Hoek as disclosed in steps (a) – (e) above including a 1<sup>st</sup> function (manufacturing) alliance comprising a plurality of manufacturer alliance members (suppliers), every member (supplier) of the alliance being configured to perform operations associated with the 1<sup>st</sup> function (manufacturing) of the product as taught in another portion shown on page 7 indicated above.

The Applicants respectfully submit that the Examiner's findings and conclusions are erroneous. The first tier suppliers referred to in Van Hoek are not configured to perform a 1<sup>st</sup> function, as contended by the Examiner. Rather, the first tier suppliers are all configured to perform

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different functions. Van Hoek, in providing an example of the 1<sup>st</sup> tier suppliers, states:

These seven companies are located at the same site as MCC and supply 'super modules' based on a postponed purchasing approach. Modules are bought by the OEM only when they are needed in the final assembly process (postponed purchasing). For example a complete rear section, including wheels, suspension and engine, is pre-assembled by one supplier who maintains the module in its possession until it is needed on the assembly line. The same is true for the doors and for the dashboard system. Together these seven suppliers supply 50 per cent of the total value of the purchased product.

Thus, it is clear that the suppliers referred to in Van Hoek are not members of a manufacturing alliance comprising a plurality of members, wherein "all members of said manufacturing alliance being configured to perform a same type of operations associated with manufacturing said product", as recited in independent claims 1 and 11.

The Examiner relies on Hammer as teaching the carrying out of what the Examiner refers to as "step (a)" above. The Examiner states:

HAMMER discloses the carrying out of step (a) above (some of the suppliers are responsible for manufacturing along with the manufacturer...Members of the virtual enterprise are tightly woven together) for the benefit of concentrating on processes at which you can be world-class or focus on their core competencies and rely on someone else (outsourcers) to perform the rest in a fast-moving technology.....

As with Van Hoek, nothing in Hammer teaches or suggests a virtual business model with all members of a manufacturing alliance "being configured to perform a same type of operations associated with manufacturing said product", and all members of a distribution alliance "being configured to perform a same type of operations associated with

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distribution of the manufactured product", as recited in independent claims 1 and 11.

For all of the above reasons, the Applicants respectfully submit that independent claims 1 and 11 are not obvious over Van Hoek or further in view of Hammer, and respectfully request that the rejection of claims 1 and 11 under 35 U.S.C. §103(a) as being obvious over Van Hoek alone or further in view of Hammer be withdrawn. The Examiner's arguments directed to the dependent claims of the present application are believed to be moot in view of the patentability of independent claims 1 and 11 over Van Hoek and Hammer. Therefore, the rejections of the dependent claims over Van Hoek or further in view of Hammer will not be addressed. Accordingly, the Applicants respectfully request that the rejection of dependent claims 2, 4-10, 12 and 14-20 under 35 U.S.C. §103(a) as being obvious over Van Hoek alone or further in view of Hammer also be withdrawn.

***2<sup>nd</sup> Rejection of Claims 7 and 10 under 35 USC §103(a) - VAN HOEK alone or in view of HAMMER, and further in view of LEWIS et al.***

Claims 7 and 10 are rejected for a 2<sup>nd</sup> time under 35 USC §103(a) as being unpatentable over VAN HOEK alone, or VAN HOEK/HAMMER as applied to claims 1 – 2, 4 – 10 above, and further in view of LEWIS et al. (Artidue 1997). The Applicants respectfully traverse the rejection.

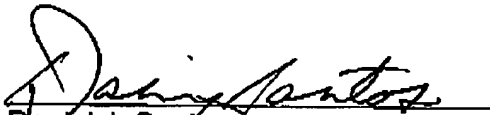
Although claims 7 and 10 recite features that are not taught or suggested by the prior art of record, because these claims depend from independent claim 1, which is believed to be patentable over the prior art of record for the reasons set forth above, the Applicants respectfully submit that claims 7 and 10 are also patentable over the prior art of record. Accordingly, the Applicants respectfully request that this rejection also be withdrawn.

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### CONCLUSION

For the reasons set forth above, it is respectfully submitted that all pending claims are now in condition for allowance, and Applicant requests a Notice of Allowance be issued in this case. Should there be any further questions or concerns, the Examiner is urged to telephone the undersigned to expedite prosecution.

Respectfully submitted,  
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